

TO: Joyce M. Grossnickle, Administrative Officer

FROM:

Wendy S. Kearney, Deputy County Attorney

DATE:

March 19, 2010

**Subject:** Lehigh Cement - Contract of Purchase and Sale; Deed for Mineral and Development Rights

**Presenter (Name & Title):** Wendy S. Kearney, Deputy County Attorney

**Requested Date:** March 30, 2010

**Phone:** (301) 600-2913

**Type of Briefing:** (Click box to select)

☐

Administrative Business

☒

Worksession

☐

Closed Session

☐

BOCC/BOE Mtg.

☐

County/Municipal Mtg.

☐

Public Hearing

**Board Action Desired:**

☒

Decision

☐

Guidance

☐

Information

**Staff Coordination:** This topic has been thoroughly coordinated with the following Division/Department Directors, and they will have representatives at the presentation: (click to place a check mark in the appropriate box).

	Staff	Initials	Date	Comments
✓	County Attorney	JMK	3/19/10	
✓	County Manager	AAH	3/15/10	
	Finance Director			
	Budget Officer			
	Fire & Rescue Services Dir.			
	Management Services Director			

	Staff	Initials	Date	Comments
✓	Permitting & Development Review Director	W. Fourn	3/22/10	
	Planning Director			
✓	Public Works Director	AJW	3/22/10	
	Utilities and Solid Waste Management Director			
	Elected Officials			
	Independent Agencies			
	Other			

Attachments:

☒

Yes

☐

No

**PLEASE NOTE:** The original and 10 copies of all attachments (including the coordination sheet) are required for the Board of County Commissioners' meetings, which includes the Joint BOCC/BOE Meeting and the County/Municipal Meeting.

If you are scheduled for a **Closed Session**, then you only need to submit the original and nine (9) copies of the back-up material. Back-up materials are due to the Administrative Officer ONE WEEK IN ADVANCE of the meeting. If materials are not received in a timely manner, you will be asked to reschedule your item.

3/22/10  
Date

DPIW reviewed this document for those issues solely associated with Clemsonville Road.  
And those issues are properly addressed.

Alan J. Hinch  
Signature

\_\_\_\_\_  
Date

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Signature

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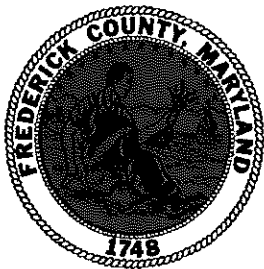
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\_\_\_\_\_  
Signature



# OFFICE OF THE COUNTY ATTORNEY FREDERICK COUNTY, MARYLAND

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701  
301-600-1030 • FAX 301-600-1161 • TTY: Use Maryland Relay  
[www.frederickcountymd.gov](http://www.frederickcountymd.gov)

## COMMISSIONERS

Jan H. Gardner  
*President*

David P. Gray  
*Vice President*

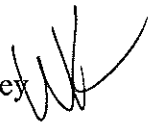
Kai J. Hagen

John L. Thompson, Jr.

Blaine R. Young

## MEMORANDUM

TO: Board of County Commissioners

FROM: Wendy S. Kearney, Deputy County Attorney 

DATE: March 19, 2010

RE: Lehigh Cement – Contract of Purchase and Sale; Deed for Mineral and Development Rights

## ISSUE

Should the Board of County Commissioners (“BOCC”) approve the proposed Contract of Purchase and Sale between Lehigh Cement Company and the BOCC?

Should the Deeds granting the mineral and development rights on the Buckey and Zimmerman properties include provisions giving the County the right to access the minerals?

## BACKGROUND

Lehigh operates the Union Bridge Quarry. Lehigh is expanding its existing mineral mining operations located to the south of Clemsonville Road onto the Lehigh Expansion Parcel, which is shown and described on the “Combined Preliminary Plan & Site Plan For Realignment of Clemsonville Road & Fountain School Road and Expansion of Union Bridge Quarry”, which was conditionally approved by the Frederick County Planning Commission on October 8, 2008.

Clemsonville Road is a County-maintained road that is partially built on a parcel owned by the County in fee simple. Lehigh is the fee simple owner of the property that adjoins the County owned fee simple portion of Clemsonville Road to the north and the south. The proposed expansion of the quarry will make it necessary for Lehigh’s equipment to frequently cross Clemsonville Road.

## COUNTY ATTORNEY

John S. Mathias

## DEPUTY COUNTY ATTORNEY

Wendy S. Kearney

## SENIOR ASSISTANT COUNTY ATTORNEYS

Michael J. Chomel  
Linda B. Thall

## ASSISTANT COUNTY ATTORNEYS

Richard J. McCain  
Kathy L. Mitchell



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As part of its expansion, Lehigh petitioned the County for the opening, closing, abandonment, re-alignment and re-conveyance of a portion of Clemsonville Road so that it can be incorporated into the expansion of the quarry. By Ordinance No. 08-06-482, dated March 27, 2008, the County approved Lehigh's petition to close a portion of Clemsonville Road (the proposed "Closed Portion") shown and described on Exhibit A (attached to the Agreement). The BOCC also agreed to consider re-conveyance of the proposed Closed Portion to Lehigh under the terms and conditions set forth in the Ordinance.

The Ordinance requires that Lehigh complete construction of the approved re-aligned portion of Clemsonville Road prior to closing the proposed Closed Portion to the public. In order to commence with grading and other site work on the expansion parcel prior to completing the re-alignment of Clemsonville Road and prior to closing the proposed Closed Portion, Lehigh requested and the Board approved a Public Road Temporary Crossing Agreement dated August 6, 2009, which allowed Lehigh temporary vehicular and pedestrian access, ingress to and egress from, over and across the proposed Closed Portion of Clemsonville Road with its equipment, and gave permission to construct certain improvements to and within the proposed Closed Portion, including but not limited to, installation of a heavier grade of paving to support large quarry vehicles, safety signage and other improvements to ensure safe continuing usage by both the public and Lehigh's equipment.

Ordinance No. 08-06-482 (the Ordinance) conditionally approved the petition to close a portion of Clemsonville Road and required that 3 items be satisfied prior to the formal closure:

- 1) that the mineral and development rights of the Zimmerman and Buckey properties be granted to the County,
- 2) that Lehigh pay to the County \$570,000 -- the estimated maintenance costs for the increased linear footage of roadway over 25 years; and
- 3) that the new segment of roadway be built at Lehigh's expense.

### **CONTRACT**

Before the Board today is a proposed Contract of Purchase and Sale which contains the details of the mechanics and timing of exchanges to satisfy the conditions outlined in the Ordinance. Approval of this Contract, subject to ratification following public hearing, would complete condition #5 of the Ordinance: "The conveyance of the portion of Clemsonville Road proposed to be closed, which is owned by the County in fee simple will be subject to the process needed for such a conveyance."

The contract provides for the preparation of an addition plat to create the small parcel to be closed and conveyed to Lehigh to comply with the County's subdivision regulations.

At settlement, the County will be paid the appraised value (\$41,500.00) and the maintenance costs for the new roadway (\$570,000.00).

After approval of the Contract, staff will schedule a public hearing for the Board to consider ratifying the Contract.

### **DEED**

There is one outstanding issue to be resolved by the Board on the language of the deed conveying the mineral rights and development rights on the two forms to the County. Attached is a proposed deed which includes provisions allowing access to the minerals on the property. Lehigh's attorney has requested deletion of that provision. If deleted, though the mineral rights have been conveyed to the County, there would be no right to access the minerals to remove them.

### **RECOMMENDATION**

Staff requests that the Board approve the Contract (subject to ratification after a public hearing) and determine whether the deed giving mineral rights to the County should also include the right to access those minerals.

#### **Attachments**

cc: Al Hudak, Director, DPW  
Gary Hessong, Director, DPDR

## CONTRACT OF PURCHASE AND SALE

THIS CONTRACT OF PURCHASE AND SALE (this "**Contract**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (hereinafter the "**Effective Date**") by and between the BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY MARYLAND, a body corporate and politic of the State of Maryland (hereinafter referred to as "**County**" or "**Seller**") and LEHIGH CEMENT COMPANY LLC, a Delaware limited liability company, surviving entity by merger with Lehigh Cement Company, a Pennsylvania corporation, formerly known as Lehigh Portland Cement Company (hereinafter referred to as "**Lehigh**" or "**Purchaser**") and Lehigh's affiliate, HANSON AGGREGATES PENNSYLVANIA LLC, a Delaware limited liability company, surviving entity by merger with Hanson Aggregates Pennsylvania, Inc., a Pennsylvania corporation (hereinafter referred to as "**Hanson**").

### RECITALS

WHEREAS, the County is the fee simple owner of that certain lot or parcel of real property located in the Johnsville Election District No. 17 of Frederick County Maryland, comprising a section of that public road known as Clemsonville Road which parcel was conveyed unto the County by Lehigh by deed dated May 26, 1987 and recorded among the Land Records of Frederick County, Maryland in Liber 1425, folio 717, and contains 5.344 acres of land, more or less.

WHEREAS, Lehigh is seeking to expand its existing mineral mining operations onto the "Lehigh Expansion Parcel" as shown and described on the "Combined Preliminary Plan & Site Plan For Realignment of Clemsonville Road & Fountain School Road and Expansion of Union Bridge Quarry" (Permit #6817) conditionally approved by the Frederick County Planning Commission on October 8, 2008 (hereinafter referred to as the "**Expansion**").

WHEREAS, Lehigh petitioned the County for the opening, closing, abandonment, re-alignment and re-conveyance of a portion of Clemsonville Road so that it can be incorporated into the Expansion (hereinafter the "**Petition**") and a remaining portion of Clemsonville Road can be re-aligned by Lehigh, at its expense.

WHEREAS, by Ordinance No. 08-06-482 dated March 27, 2008 attached herein and incorporated herein as **EXHIBIT "A"** (hereinafter the "**Ordinance**"), the County approved the Petition to close a portion of Clemsonville Road containing 1.658 Acres, as hereinafter described as the "Parcel", and open a re-aligned a portion of Clemsonville Road.

WHEREAS, by Public Road Temporary Crossing Agreement between County and Lehigh dated August 6, 2009, County granted Lehigh the temporary right to use and cross Clemsonville Road within the Parcel to undertake site preparations and other work for the Expansion (hereinafter the "**Crossing Agreement**").

WHEREAS, pursuant to the Petition and the Ordinance, County and Lehigh desire to further memorialize in writing the terms, conditions and sequencing for the conveyance of the Parcel, which is a portion of Clemsonville Road, to Lehigh (or its designee Hanson) and the construction by Lehigh of the said re-alignment of a portion of Clemsonville Road and for that purpose have entered into this Contract.

WHEREAS, County, at Lehigh's expense, obtained a fair market value appraisal of the Parcel of Forty One Thousand Five Hundred Dollars (\$41,500.00) by Appraisal Report prepared by Bowers Appraisal Service, LLP dated January 7, 2009.

NOW THEREFORE, in consideration of the sum of Forty One Thousand Five Hundred Dollars (\$41,500.00), being the appraised fair market value of the Parcel which is the portion of Clemsonville Road to be closed and conveyed pursuant hereto, the mutual promises, conditions and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually covenant and agree as follows:

1. PROPERTY TO BE CONVEYED. County hereby bargains, sells and agrees to convey to Lehigh (or Hanson as its designee) and Lehigh hereby agrees to purchase from County, all of the County's right, title, claim and interest, in fee simple, in and to that tract or parcel of land containing 1.658 Acres, and being a portion of Clemsonville Road in the Johnsville Election District, Frederick County, Maryland, closed by the County pursuant to the Petition and the Ordinance, as shown and described on EXHIBIT "B" attached hereto and incorporated herein, together with any and all structures and improvements thereon (hereinafter "**the Parcel**") and all rights, ways, waters, utilities, easements, privileges and appurtenances belonging thereto.
2. PURCHASE PRICE. Lehigh agrees to purchase, and County agrees to sell, the Parcel for the appraised price of Forty One Thousand Five Hundred Dollars U.S. (\$41,500.00) as set forth on the Real Estate Appraisal dated January 7, 2009, prepared by Bowers Appraisal Service, LLP and attached hereto and incorporated herein as EXHIBIT "C" (hereinafter the "**Purchase Price**"). The Purchase Price shall be paid by Purchaser to Seller in cash (U.S.) or certified funds at the time of Settlement.
3. TITLE. Title to the Parcel shall be free and clear of all liens, leases, and encumbrances, except for (i) recorded easements for public utilities, (ii) any easements which may be observed by simple inspection of the Property.
4. SETTLEMENT. Final settlement for the conveyance of the Parcel by County to Lehigh (hereinafter the "**Settlement**") and the completion of the other terms and conditions of the Ordinance will take place within fifteen (15) days after the date that Lehigh completes the construction of the said re-alignment of a portion of Clemsonville Road. Lehigh's completion of said re-alignment will be deemed to have occurred upon: (a) Lehigh's dedication of said re-alignment by plat (that will be recorded among the aforesaid Land Records upon approval by the County); and (b) the County's acceptance of the dedication for purposes of maintenance, into the County's public road system; and ( c ) the County's signature (as the approving governmental

authority and as owner of a remaining portion of Clemsonville Road) on an addition plat prepared at Lehigh's expense and to be recorded among the aforesaid Land Records (hereinafter referred to as the "**Addition Plat**") for the addition of the Parcel to the adjoining lands owned by Lehigh (all hereinafter collectively referred to as the "**Conditions Precedent**"). Settlement will be held at the law offices of Severn, O'Connor & Kresslein, P.A., 50 Carroll Creek Way, Suite 340, Frederick, Maryland 21701, or such other location agreed to by the parties. If the Conditions Precedent to Settlement are not satisfied by December 31, 2012, then in that event, Lehigh shall either terminate this Contract or extend the date of Settlement and the period of time necessary to satisfy the Conditions Precedent by up to one (1) year by written notice delivered to County prior to December 31, 2012. If upon extension by Lehigh pursuant hereto the Conditions Precedent are not satisfied by December 31, 2013, then and in that event, this Contract shall be null and void.

5. PRORATIONS AND SETTLEMENT COSTS. All real property taxes, rent, water and sewer charges, front foot benefit assessments and other public charges and assessments on the Parcel shall be apportioned to the Settlement Date between the parties and thereafter paid by Purchaser. All utility charges and other costs of operation, if any, shall be paid by the Seller up to the Settlement Date. Upon payment of the Purchase Price, the Seller will provide to Purchaser, at Purchaser's expense, a special warranty deed conveying title to the Parcel to the Purchaser by reference to the Addition Plat. Seller shall pay any costs and expenses associated with the release of any liens on the Parcel. The Purchaser shall pay the County and/or State Recordation Tax and Transfer Tax on the deed, if any. The Purchaser shall be responsible for all other Settlement expenses and recording costs, and all other expenses incurred with respect to the purchase of the Parcel, including, but not limited to, costs of title search/examination, title insurance premiums, Purchaser's attorney's fees, title abstract fees, and any other costs in addition to the amounts for which Seller is obligated to pay as set forth above.

6. ADDITIONAL CONSIDERATION. At Settlement and pursuant to the Ordinance, and, inter alia, in consideration and exchange for the County conveying the Parcel, Lehigh will cause Hanson, on behalf of Lehigh, to execute and deliver to County by deed, all of its mineral rights and development (subdivision) rights (but specifically reserving unto Hanson all other rights, title, claim and interest) from the lots or parcels of real property described as follows:

a) All that lot or parcel of land now or formerly known as the "**Buckey Farm**" and being the same real estate conveyed unto Hanson from Elizabeth B. Clark and Mary Marshall Buckey, Trustees of a Revocable Inter-Vivos Trust created by George P. Buckey and Martha B. Buckey by Agreement dated April 15, 2003, by deed dated March 11, 2008 and recorded among the Land Records of Frederick County, Maryland in Liber 6919, folio 272; and

b) All that lot or parcel of land now or formerly known as the "**Zimmerman Farm**" and being the same real estate conveyed unto Hanson from Melvin A. Zimmerman and Kathleen P. Zimmerman, Trustees of the Melvin A. Zimmerman and Kathleen P. Zimmerman Revocable Convertible Trust Agreements, under a certain Trust Agreement dated September 28, 1994, by deed dated March 10, 2008 and recorded among the Land Records of Frederick County, Maryland in Liber 6919, folio 282.



7. NEW CLEMSONVILLE ROAD DEDICATION AND MAINTENANCE COSTS. Prior to Settlement, Purchaser shall have prepared and recorded at Purchaser's expense the aforesaid plat (described in Section 4 of this Contract) which among other matters, will describe and dedicate the right-of-way for the realigned portion of Clemsonville Road. At Settlement and pursuant to the Ordinance, Lehigh will pay to the County a one time, lump sum payment of Five Hundred and Seventy Thousand Dollars, (\$570,000.00) for the estimated cost to the County to maintain for twenty five (25) years the additional linear footage of re-aligned Clemsonville Road constructed by Lehigh.

8. DEFAULT AND REMEDIES. If either party hereto fails to make Settlement as herein agreed, the non-defaulting party may elect to pursue against the defaulting party all available remedies at law or in equity, including but not limited to specific performance and/or damages. In the event of any litigation involving this Contract, it is agreed that the party to this Contract that does not prevail in such litigation, including any appeals, shall pay the reasonable attorney's fees of the prevailing party for all of such litigation. In the event of default hereunder, the non-defaulting party shall send the defaulting party written notice of default and the opportunity to cure and correct such default within thirty (30) calendar days, time being of the essence. If such default is not cured or corrected within the 30-day period following the defaulting party's receipt of such notice, the non-defaulting party may institute and pursue all available remedies for default under Maryland law.

9. INTERNAL REVENUE SERVICE FILING: Purchaser and Seller each agree to cooperate with the person responsible for Settlement by providing all necessary information so that a report can be filed with the Internal Revenue Service, as required by Section 6045 of the IRS Code. To the extent permitted by law, any fees (but not any taxes that are the obligation of Seller) incurred as a result of such filing will be paid by the Purchaser.

10. NOTICES: All notices, requests, consents and other communications hereunder shall be in writing and shall be (i) personally delivered, (ii) sent by overnight delivery, or (iii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid:

If to Purchaser:

Lehigh Cement Company LLC  
c/o Kurt Deery  
675 Quaker Hill Road  
Union Bridge, MD 21791-0578

With a copy to:

Severn, O'Connor & Kresslein, P.A.  
David Severn, Esquire  
50 Carroll Creek Way, Suite 340  
Frederick, MD 21701

or to such other address as may have been furnished by Purchaser to Seller in writing.

If to Seller:

The Board of County Commissioners  
of Frederick County  
Attn: Ron Hart, County Manager  
12 E Church Street  
Frederick, MD 21701

With a copy to:

Wendy Kearney, Esquire  
Deputy County Attorney  
Winchester Hall  
12 E. Church Street  
Frederick, MD 21701

or to such other address as may have been furnished by Seller to Purchaser in writing.

Any notice, request, consent or other communication shall be deemed received (i) in the case of personal delivery when it is personally delivered, (ii) in the case of overnight delivery on the day following the date sent, or (iii) on the third (3rd) business day after it is deposited in the United States mail, as set forth above, as the case may be.

11. MISCELLANEOUS. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their successors and assigns. This Contract contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions or representations not herein written or attached hereto in an addendum signed by all parties. No change or modification of this Contract shall be valid unless in writing signed by both Seller and Purchaser; and no purported or alleged waiver of any provision hereof shall be valid or effective unless in writing signed by the party against whom it is sought to be enforced. The parties acknowledge that they have had the opportunity to be represented by counsel in the negotiation and preparation of this Contract, and, therefore, expressly agree that any ambiguities in the terms and conditions contained herein shall not be construed against either party but shall be interpreted in accordance with a fair construction of the law. Purchaser shall have the right to record this Contract among the Land Records of Frederick County, Maryland, at its expense. The introductory recitals and WHEREAS clauses are incorporated into the body of this Contract and accurately represent the factual basis for this Contract and the intentions of the parties hereto. This Contract shall be interpreted and enforced under the provisions of Maryland law.

12. COOPERATION OF PARTIES. Following Settlement, the parties hereto shall execute and deliver to the requesting party any and all affidavits, certifications, confirmations, plats, agreements and other similar documents reasonably requested for the purposes of effectuating, completing or confirming the terms of this Contract, Settlement and the Ordinance.

13. FINAL RATIFICATION. It is understood and agreed that this Contract will become effective only after ratification by the County at or following a public hearing.

WITNESS the hands and seals of the Seller and Purchaser affixed hereto on the day and year hereinbelow written.

WITNESS:

THE BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Jan H. Gardner, President

\* \* \*

STATE OF MARYLAND, COUNTY OF FREDERICK, MARYLAND TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jan H. Gardner, President of the Board of County Commissioners of Frederick County, Maryland, a body politic and corporate of the State of Maryland, and acknowledged the foregoing instrument to be the act of said body politic and corporate. And at the same time, she made oath in due form of law that she is the President of said body politic and corporate and is duly authorized to make this acknowledgment on its behalf.

Witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

WITNESS:

LEHIGH CEMENT COMPANY LLC,  
a Delaware limited liability company,  
surviving entity by merger with  
Lehigh Cement Company, a  
Pennsylvania corporation; formerly  
known as Lehigh Portland Cement  
Company

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\* \* \*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for  
the State of \_\_\_\_\_, County of \_\_\_\_\_, personally appeared  
\_\_\_\_\_, of Lehigh Cement Company LLC, a  
Delaware limited liability company, surviving entity by merger with Lehigh Cement Company a  
Pennsylvania corporation (formerly known as Lehigh Portland Cement Company), and that he  
did certify and acknowledge under the penalties of perjury that he is the \_\_\_\_\_  
of said limited liability company and is duly authorized to execute and deliver the foregoing on  
its behalf.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

WITNESS:

HANSON AGGREGATES PENNSYLVANIA  
LLC, a Delaware limited liability company,  
surviving entity by merger with  
Hanson Aggregates Pennsylvania, Inc.,  
a Pennsylvania corporation

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\* \* \*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, TO WIT:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for  
the State of \_\_\_\_\_, County of \_\_\_\_\_, personally  
appeared \_\_\_\_\_,

\_\_\_\_\_ of Hanson Aggregates Pennsylvania LLC, a Delaware limited  
liability company, surviving entity by merger with Hanson Aggregates Pennsylvania, Inc., a  
Pennsylvania corporation, and he did certify and acknowledge under the penalties of perjury that  
he is the \_\_\_\_\_ of said limited liability company and is duly authorized to  
execute and deliver the foregoing on its behalf.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Following a public hearing on \_\_\_\_\_, the Board of County Commissioners voted to ratify this Contract of Purchase and Sale, effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY

By: \_\_\_\_\_ (SEAL)  
Jan H. Gardner, President

\* \* \*

ATTORNEY'S CERTIFICATE

This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_  
David A. Severn, Attorney

THE EFFECTIVE DATE OF THIS ORDINANCE IS MARCH 27, 2008

ORDINANCE NO. 08-06-482

ORDINANCE OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

Re: Petition to Open, Close, and Alter Portions of Clemsonville Road

RECITALS

Lehigh Cement Company filed a petition with the Board of County Commissioners ("Board") (Amended on December 4, 2007) to alter Clemsonville Road requesting to close a small portion of the roadway and open an alternative alignment, pursuant to the Annotated Code of Maryland, Article 25, Section 135 and following.

The petition proposed closure of approximately 1,000 linear feet of existing Clemsonville Road, and a relocation/realignment of approximately 7,000 linear feet of roadway to connect to Fountain School Road.

The Division of Public Works had no objections to the proposal.

The Frederick County Planning Commission found the request consistent with the County Comprehensive Plan and recommended approval.

The Board held a public hearing on the petition on February 5, 2008, during which members of the public and representatives of the petitioner provided public comment.

During the February 5, 2008, public hearing, a motion was made, received a second, and was tabled to March 18, 2008.

The motion was to grant the petition subject to conditions:

1. Petitioner grant to the County, the mineral rights and development (subdivision) rights of the Zimmerman and Buckey properties;
2. Petitioner pay to the County, in advance, the estimated cost to maintain for 25 years the additional linear footage of road to be created;
3. The portion of roadway to be built to replace the closed portion be aligned within 300 feet of the line separating the Mineral Mining zoned property from the Agricultural zoned property near the northern edge of the Buckey property;
4. Lehigh pay all costs to construct the realigned/replacement portion of the roadway; and
- 5) The conveyance of the portion of Clemsonville Road proposed to be closed, which is owned by the County in fee simple would be subject to the process followed for such a conveyance.

All 5 of the above conditions to occur before the physical closure of the portion of Clemsonville Road.

During the time between the February 5<sup>th</sup> hearing and March 18<sup>th</sup> meeting, representatives of Lehigh met with County staff to discuss the issues.

Staff, by memo dated March 4, 2008, advised the Board that its estimate of the maintenance cost over a 25-year period for the proposed increased mileage of Clemsonville Road to be \$570,000.



Petitioner, Lehigh Cement Company, by letter dated March 17, 2008, from its counsel, indicated that it "will not oppose or object" to the pending motion and requested that it be approved.

The Board reconvened on March 18, 2008.

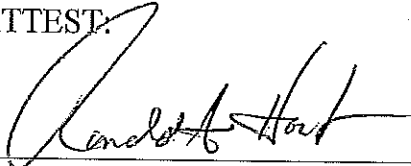
NOW THEREFORE BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that the petition to alter Clemsonville Road is approved, and that portion of Clemsonville Road as shown on Exhibit A is closed, subject to the following conditions:

1. Petitioner grant to the County, the mineral rights and development (subdivision) rights of the Zimmerman and Buckey properties;
2. Petitioner pay to the County \$570,00.00, the estimated cost to maintain for 25 years the additional linear footage of road to be constructed by petitioner;
3. The segment of roadway to be built to replace the closed portion be aligned within 300 feet of the line separating the Mineral Mining zoned property from the Agricultural zoned property near the northern edge of the Buckey property as shown on Exhibit A;
4. Lehigh pay all costs to construct the replacement/realigned portion of roadway; and
- 5) The conveyance of the portion of Clemsonville Road proposed to be closed, which is owed by the County in fee simple will be subject to the process needed for such a conveyance.

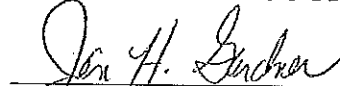
All 5 of the above conditions to occur before the physical closure of the portion of Clemsonville Road.

The undersigned hereby certifies that this Ordinance was approved and adopted on this 27th day of March, 2008.

ATTEST:

  
\_\_\_\_\_  
Ronald A. Hart  
County Manager

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

  
\_\_\_\_\_  
Jan H. Gardner (SEAL)  
President

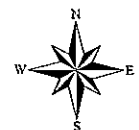
UK 3/27/08

Exhibit A

# FREDERICK COUNTY DIVISION OF PUBLIC WORKS



1 inch equals 1,167 feet  
1 inch equals 0.2 miles



## Disclaimers

While efforts have been made to ensure the accuracy of this map, Frederick County accepts no liability or responsibility for errors, omissions, or positional inaccuracies in the content of this map. Reliance on this map is at the risk of the user. This map is for illustration purposes only and should not be used for surveying, engineering, or site-specific analysis. The County is currently developing its road centerline data. Road centerlines may contain inaccuracies and both features and attribute information may be missing.

Frederick County was flown in March - April, 2005 to produce the County's 1:1200 scale digital orthophotography. The orthophotography may not reflect current ground conditions.

This ADC Grid is only licensed for use by Frederick County Government staff and may not be released to the public, corporate or otherwise, for any reason.

8445 Progress Drive, Suite BB  
Frederick, MD 21701



(301) 662-1799  
FAX (301) 662-8004

**Description of Portion of  
Clemsonville Road  
To Be Abandoned**

**Near Union Bridge  
17<sup>th</sup> Election District**

**Maryland  
Frederick County**

**1.658 acres  
October 21, 2008**

Beginning for the same at the end of the 13<sup>th</sup> or South 03 degrees 51 minutes 53 seconds West 1100.00 feet line of the right-of-way of Clemsonville Road (60 feet wide) as relocated and granted by the Lehigh Portland Cement Company to the Board of County Commissioners of Frederick County, Maryland, in a deed dated May 26, 1987, and recorded among the Land Records of Frederick County, Maryland, in Book 1425 page 717, thence running with and binding on the 14<sup>th</sup>, 15<sup>th</sup>, and a portion of the 16<sup>th</sup> lines of said deed, as now surveyed and referring all bearings of this description to the Maryland Coordinate System (NAD 83/91), viz:

(The tangent bearing as now surveyed South 05 degrees 24 minutes 19 seconds East) By a tangent curve to the left in a southeasterly direction with the radius of 370.00 feet for the distance of 507.63 feet, the arc of which is subtended by a chord bearings South 44 degrees 42 minutes 34 seconds East 468.74 feet to a point, thence

South 84 degrees 00 minutes 49 seconds East 353.10 feet to a point, and thence

By a tangent curve to the right in the southeasterly direction with the radius of 430.00 feet for the distance of 413.16 feet, the arc of which is subtended by a chord bearing South 56 degrees 29 minutes 13 seconds East 397.45 feet, thence running across said right-of-way

South 01 degrees 40 minutes 13 seconds West 219.09 feet to the end of the first of North 78 degrees 58 minutes 24 seconds West 30.00 feet line of said right-of-way, thence running with and binding on the first, second, and a portion of the third lines of said right-of-way the three following courses, viz:

By a non-tangent curve to the left in a northwesterly direction with the radius of 370.00 feet for the distance of 553.32 feet, the arc of which is subtended by a chord bearing North 41 degrees 10 minutes 17 seconds West 503.18 feet to a point, thence

Serving Maryland, Pennsylvania, Virginia & West Virginia with offices in:

*Westminster*  
439 East Main Street, Westminster, MD 21157  
(410) 848-1790 • (410) 848-1791 FAX

*Frederick*  
8445 Progress Drive, Suite BB, Frederick, MD 21701  
(301) 662-1799 • (301) 662-8004 FAX

**Exhibit B**



North 84 degrees 00 minutes 49 seconds West 353.10 feet to a point, and thence

By a tangent curve to the right in a northwesterly direction with the radius of 430.00 feet for the distance of 360.06 feet, the arc of which is subtended by a chord bearings North 60 degrees 01 minutes 30 seconds West 349.64 feet to a point, thence running across said right-of-way, binding on the proposed right-of-way for Clemsonville Road (60 feet wide)

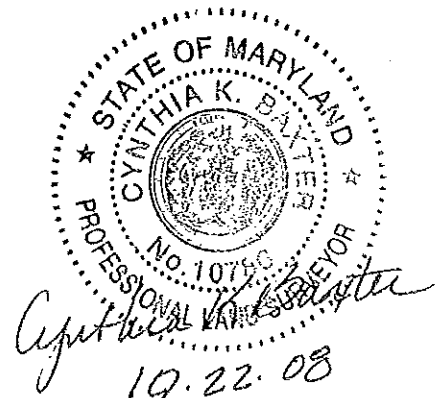
North 05 degrees 24 minutes 19 seconds West 219.09 feet to the beginning.

Containing 1.658 acres of land, more or less.

Being part of the right-of-way of Clemsonville Road (60 feet wide) as relocated and granted by the Lehigh Portland Cement Company to the Board of County Commissioners of Frederick County, Maryland, in a deed dated May 26, 1987, and recorded among the Land Records of Frederick County, Maryland, in Book 1425 page 717.

*This metes & bounds description and the work reflected in it were prepared by me or under my responsible charge, and comply with the requirements set forth in the Maryland Minimum Standards for Professional Land Surveyors (COMAR 09.13.10)*

R:\JOB\95\95148AM\doc\desc Clemsonville abandonment.doc



(NAD 83)

PROPOSED REALIGNMENT

CURVE DATA

#	RAD.	TAN.	BEARING	CHORD	DELTA	ARC LEN.
1	370.00	343.13	N41°01'17"W	503.18	85°41'01"	553.32
2	430.00	191.35	N60°01'30"W	349.64	47°58'38"	360.06
3	370.00	302.89	S44°42'34"E	468.74	78°36'30"	507.63
4	430.00	224.09	S56°29'13"E	397.45	55°03'09"	413.16

1.658 Acres

LEHIGH PORTLAND CEMENT  
54.117  
P. 5

COORDINATES

#	NORTH	EAST
1	681367.2361	1263341.9154
2	681746.0035	1263010.6631
3	681782.8296	1262659.4916
4	681957.5160	1262356.6215
5	682175.6307	1262335.9834
6	681842.5023	1262665.7493
7	681805.6762	1263016.9207
8	681586.2318	1263348.3017

COORDINATES ARE DESIGNATED THUS: (XX)

CLEMSONVILLE ROAD

N84°00'49"W 353.10

EX. 22' PAVING

EX. 60' R/W

THIS RIGHT OF WAY AND BOUNDARY SURVEY AND THE WORK REFLECTED IN IT WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE, AND COMPLY WITH THE REQUIREMENTS SET FORTH IN THE MARYLAND MINIMUM STANDARDS FOR PROFESSIONAL LAND SURVEYORS (COMAR 09-13-06).

*Cynthia K. Baxter* 10.22.08  
By: Cynthia K. Baxter Date  
Professional Land Surveyor  
MD Registration # 10786

OWNER:  
BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY  
B. 1425 P. 717

EXHIBIT OF  
CLEMSONVILLE ROAD  
PORTION TO BE  
ABANDONED



FREDERICK OFFICE:  
3145 Progress Drive, Suite 88  
Frederick, MD 21701-4879  
(301) 662-1199  
FAX (301) 662-8004

WESTMINSTER OFFICE:  
439 East Main Street  
Westminster, MD 21157-5539  
(410) 846-1190  
FAX (410) 846-1181

DRAWN BY: BSG
DESIGN BY: CKB
REVIEW BY: CKB
DATE: OCT., 2008
SCALE: 1"=100'
JOB NO: 98248AM
SHEET: 1

**Lehigh Portland Cement Company  
Existing road bed along Clemsonville Road  
Frederick County, Maryland**

**BOWERS APPRAISAL SERVICE, LLP**

*Real Estate Appraisers and Consultants*

**1928 Dual Highway**

**Hagerstown, Maryland 21740**

*Richard L. Bowers, SRPA, SRA, SR/WA*

*Michael C. Bowers, SRA*

*Patrick B. Bowers*

*Hagerstown 301-739-7610*

*Frederick 301-416-7325*

*Fax 301-416-7550*

January 7, 2009

Division of Public Works  
Frederick County, Maryland  
118 North Market Street  
Frederick, Maryland 21701  
Attention: Crystal C. Chamberlain

Reference: Lehigh Portland Cement Company  
Existing road bed along Clemsonville Road, Frederick County, Maryland

Dear Ms. Chamberlain:

Pursuant to your request, we are furnishing a summary appraisal report for the above referenced property. This letter of transmittal is accompanied by an appraisal report containing a total of 27 pages including addenda.

The purpose of the appraisal is to estimate the market value of the subject property as defined in this appraisal. The interest in the property being appraised is the fee simple estate. The intended use of the appraisal is for negotiations with Lehigh Portland Cement Company and Frederick County Division of Public Works to convey the property to Lehigh Portland Cement Company. The only intended user of this appraisal is the client, Division of Public Works, Frederick County, Maryland.

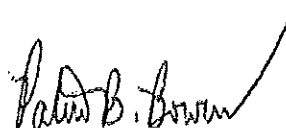
The final opinion of value for the subject property is Forty One Thousand Five Hundred Dollars (\$41,500 rounded) as of December 9, 2008, which was the last date of inspection. This opinion of value assumes an exposure time of 6 to 12 months, which is typical for this type of property.

We hereby certify that we have no interest, past, present, or prospective in this property, which would tend to influence our unbiased opinion of value. If there are any questions in relation to this appraisal, we will be glad to discuss them with you anytime.

Very truly yours,



Richard L. Bowers, SRPA, SRA, SR/WA  
Real Estate Appraiser – Counselor  
MD Cert. General Appraiser #04-10001



Patrick B. Bowers  
Real Estate Appraiser - Counselor  
MD Cert. General Appraiser #04-20256



### *Executive Summary*

**Location:** Existing road bed along Clemsonville Road Frederick County, Maryland.

**Property Description:** The subject property being appraised contains 1.658 acres, which is an existing road bed being abandoned.

**Zoning:** Mineral Mining (MM)

**Utilities:** Utilities available are electricity and telephone.

**Present Use:** Existing road bed.

**Highest and Best Use:** The highest and best use of the subject property is assemblage with adjacent parcels.

**Date of Value:** December 9, 2008

**Estimated Exposure Time:** 6 to 12 months

**Final Opinion of Value:** \$41,500.

## *Table of Contents*

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Executive Summary	
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*Certification of the Appraisers*

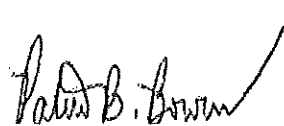
We certify that, to the best of our knowledge and belief:

- ☐ The statements of fact contained in this report are true and correct.
- ☐ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- ☐ We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- ☐ We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- ☐ Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- ☐ Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- ☐ Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- ☐ Richard L. Bowers & Patrick B. Bowers made a personal inspection of the property that is the subject of this report.
- ☐ No one provided significant real property appraisal assistance to the persons signing this certification.
- ☐ The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice, which include the Uniform Standards of Professional Appraisal Practice.
- ☐ The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- ☐ As of the date of this report, Richard L. Bowers, SRPA, SRA, has completed the requirements of the continuing education program of the Appraisal Institute.

*Date of Report:* January 7, 2009



Richard L. Bowers, SRPA, SRA, SR/WA  
Real Estate Appraiser – Counselor  
MD Cert. General Appraiser #04-10001



Patrick B. Bowers  
Real Estate Appraiser - Counselor  
MD Cert. General Appraiser #04-20256

### ***Scope of the Appraisal***

This is a summary appraisal report that conforms to the needs of the client for the intended use of this appraisal. A physical inspection was made of the existing road bed area on December 9, 2008, which was the last date of inspection.

Market data, including vacant land sales and improved sales with an abstracted land value, was researched over the past five years. Real estate property transfers were collected from the State of Maryland Tax Assessment Office, Trend real estate service, and the Metropolitan Regional Information Systems (MRIS) for Frederick County, Maryland. The sales were verified with the grantor, grantee, realtor, closing attorney(s), and/or by personal inspection.

In preparing this appraisal, all three approaches to value are considered. However, the only applicable method of valuation is the Sales Comparison Approach. The Cost Approach and Income Capitalization Approach are not applicable in completing this appraisal, since the subject land area is an existing road bed.

### ***Purpose, Intended Use, and Intended User(s) of the Appraisal***

The purpose of the appraisal is to estimate the market value of the subject property as defined in this appraisal. The interest in the property being appraised is the fee simple estate. The intended use of the appraisal is for negotiations with Lehigh Portland Cement Company and Frederick County Division of Public Works to convey the property to Lehigh Portland Cement Company. The only intended user of this appraisal is the client, Division of Public Works, Frederick County, Maryland.

### ***Definition of Market Value***

The following generally accepted definition of market value, as defined in *The Appraisal of Real Estate*, 12th edition Chicago: Appraisal Institute, 2001, is used in this appraisal:

The most probable price, which a specified interest in real property is likely to bring under all the following conditions:

1. Consummation of a sale occurs as of a specified date.
2. An open and competitive market exists for the property interest appraised.
3. The buyer and seller are each acting prudently and knowledgeably.
4. The price is not affected by undue stimulus.
5. The buyer and seller are typically motivated.
6. Both parties are acting in what they consider their best interest.
7. Marketing efforts were adequate and a reasonable time was allowed for exposure in the open market.
8. Payment was made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

### ***Identification of Property***

The subject property, which is located in District 17, Frederick County, Maryland, is identified as an existing road bed being abandoned along Clemsonville Road.

### ***Neighborhood Data***

The subject property, which is an existing road bed, is located along Clemsonville Road in District 17, Frederick County, Maryland. The immediate area consists of a cement plant, operating farm properties, farmette type properties, and single family residential properties interspersed along connecting county roads in this general area. Utilities available are electricity and telephone. Water supply in the area is by drilled wells and sanitary disposal is by on-site septic systems. Major shopping and employment centers are within 15 to 20 minutes driving time to city of Frederick, which is the county seat for Frederick County, Maryland. Many of the residents in this area also commute to the metropolitan areas of Washington, D.C. and Baltimore, Maryland for employment.

### *Assessment*

Land	\$ N/A
Improvements	\$ N/A
Total	\$ N/A

A specific assessment is not available for the subject tract being appraised, since this is an existing road bed for a portion of Clemsonville Road.

### *Zoning & Utilities*

The subject property is zoned Mineral Mining (MM) by the Frederick County zoning ordinance. All of the permitted uses for this zoning classification were reviewed. Utilities available are electricity and telephone.

### *Historical Data*

The subject tract is an existing road bed for a portion of Clemsonville Road. A title search was not furnished for review.

### *Description of Land*

The total land area being appraised contains 1.658 acres, which is an existing road bed that will be abandoned, and is located along Clemsonville Road. Approximately 1,266 feet of frontage is located along the southwest side of Clemsonville Road and approximately 1,274 feet of frontage along the northeast side of Clemsonville Road. According to FEMA Map 240027 0130A dated June 1, 1978, the subject property is not located in a flood hazard area.

### *Highest & Best Use*

Highest and Best Use, according to The Appraisal of Real Estate, 12<sup>th</sup> Edition, Appraisal Institute 2001, page 305, is defined as:

*The reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.*

In estimating the highest and best use, there are essentially 4 stages of analysis:

1. *Legally Permissible:* What uses are permitted by current zoning regulations as of the date of the appraisal?
2. *Physically Possible:* Given the legally permissible uses, what uses of the site are physically possible?
3. *Financially Feasible:* Which possible and permissible uses will produce a net return to the owner of the land?
4. *Maximally Productive:* Among the financially feasible uses, which use will produce the highest net return or the highest present worth?

The following tests must be met in estimating the highest and best use: The use must be legal. The use must be probable, not speculative or conjectural. There must be a profitable demand for such use and it must return to the land the highest net return for the longest period of time.

After analyzing the four stage of analysis, we have concluded that the highest and best use of the subject property is assemblage with adjacent parcels. This use is physically possible, legally permissible, and brings the highest net return to the land.

*Pictures of Subject Property*



Existing road bed to the northwest at the corner of Lehigh Road and Clemsonville Road.



Existing road bed to the southeast along Clemsonville Road.



*Method of Valuation*

In evaluating the subject property, consideration is given to all three approaches to value, the Cost Approach, Sales Comparison Approach and Income Capitalization Approach, in arriving at the final opinion of value.

However, the only applicable approach to value in appraising the subject property is the Sales Comparison Approach. This approach to value analyzes land sales in the marketing area to estimate the land value for the subject property. Therefore, the Cost Approach and Income Capitalization Approach are not applicable in appraising the subject property.

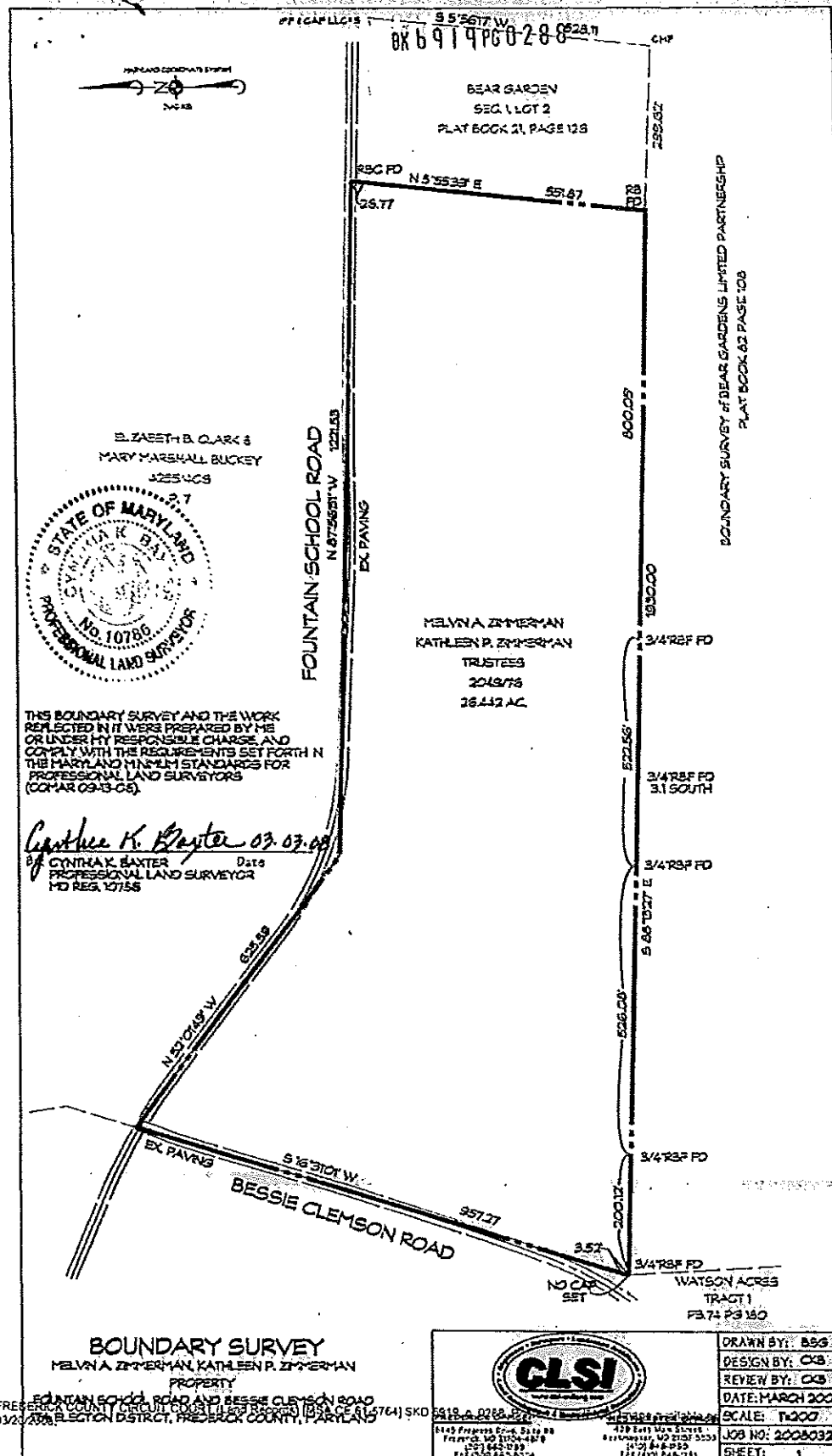
The following sales were analyzed to estimate the land value for the subject property:

*Comparable Sale No. 1*

Grantor: Melvin A. & Kathleen P. Zimmerman  
 Grantee: Hanson Aggregates Pennsylvania, Inc.  
 Date: March 17, 2008  
 Deed Reference: 6919/282  
 Tax ID No.: 17-362909  
 Consideration: \$727,000  
 Area: 26.442 acres  
 Indicated Price Per Acre: \$27,494 per acre  
 Zoning: Agricultural  
 Property Rights Conveyed: Fee Simple  
 Buyer Motivation: Raze the existing dwelling  
 Highest & Best Use: Assemblage with adjacent parcels  
 Description: This property is located along the south side of Fountain School Road and the east side of Bessie Clemson Road in District 17, Frederick County, Maryland. Improvements include an older 2-story vinyl dwelling (NCV). The property is further identified as Tax Map Parcel 44-30, with a mailing address of 10801 Fountain School Road. Utilities available are electricity and telephone. Water supply in the area is by drilled wells and sanitary disposal is by on-site septic systems. The land is at road grade and is all cleared with level to gently rolling topography. A small stream bisects the property. Verification is by Court House records and Trend real estate reports. This was a cash transaction. From our analysis, this was an arms-length sale.



# Comparable Sale No. 1 - Boundary Survey



Existing road bed along Clemsonville Road

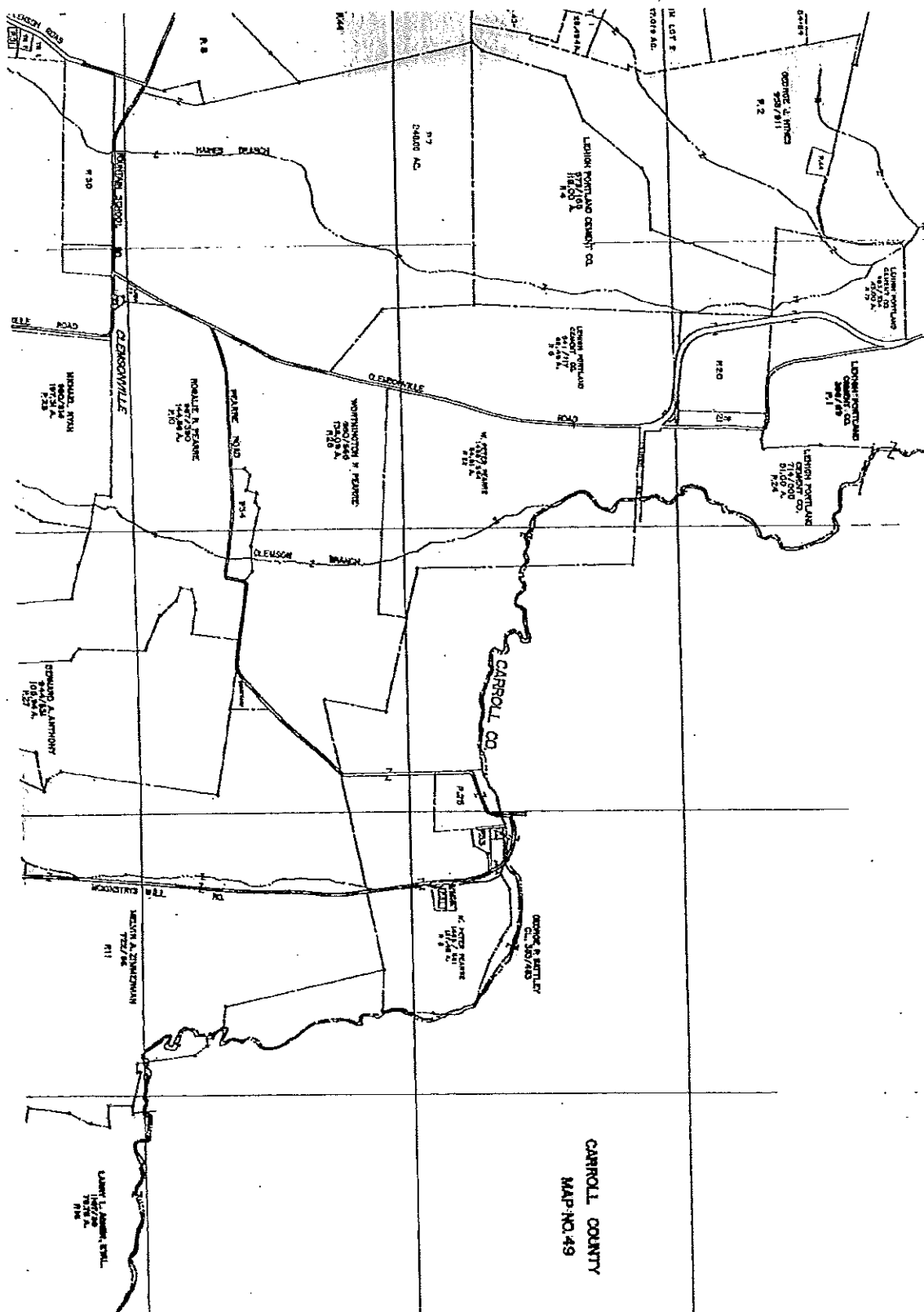
Lehigh Portland Cement Company

*Comparable Sale No. 2*

Grantor:	Elizabeth B. Clark, et al
Grantee:	Hanson Aggregates Pennsylvania, Inc.
Date:	March 17, 2008
Deed Reference:	6919/272
Tax ID No.:	17-362534
Consideration:	\$3,200,000
Area:	237.488 acres
Indicated Price Per Acre:	\$13,474 per acre
Zoning:	Agricultural
Property Rights Conveyed:	Fee Simple
Buyer Motivation:	Raze the existing dwelling and farm buildings
Highest & Best Use	Assemblage with adjacent parcels
Description:	This property is located along the west side of Clemsonville Road and north side of Fountain School Road in District 17, Frederick County, Maryland. Improvements include an older 2-story brick dwelling (NCV), bank barn (NCV), and metal shed (NCV). The property is further identified as Tax Map Parcel 44-7. Utilities available are electricity and telephone. Water supply in the area is by drilled wells and sanitary disposal is by on-site septic systems. The land is at road grade and is mostly all cleared with level to gently rolling topography. A small stream and power line easement bisects the property. Verification is by Court House records and Trend real estate reports. This was a cash transaction. From our analysis, this was an arms-length sale.



Existing road bed along Clemsonville Road

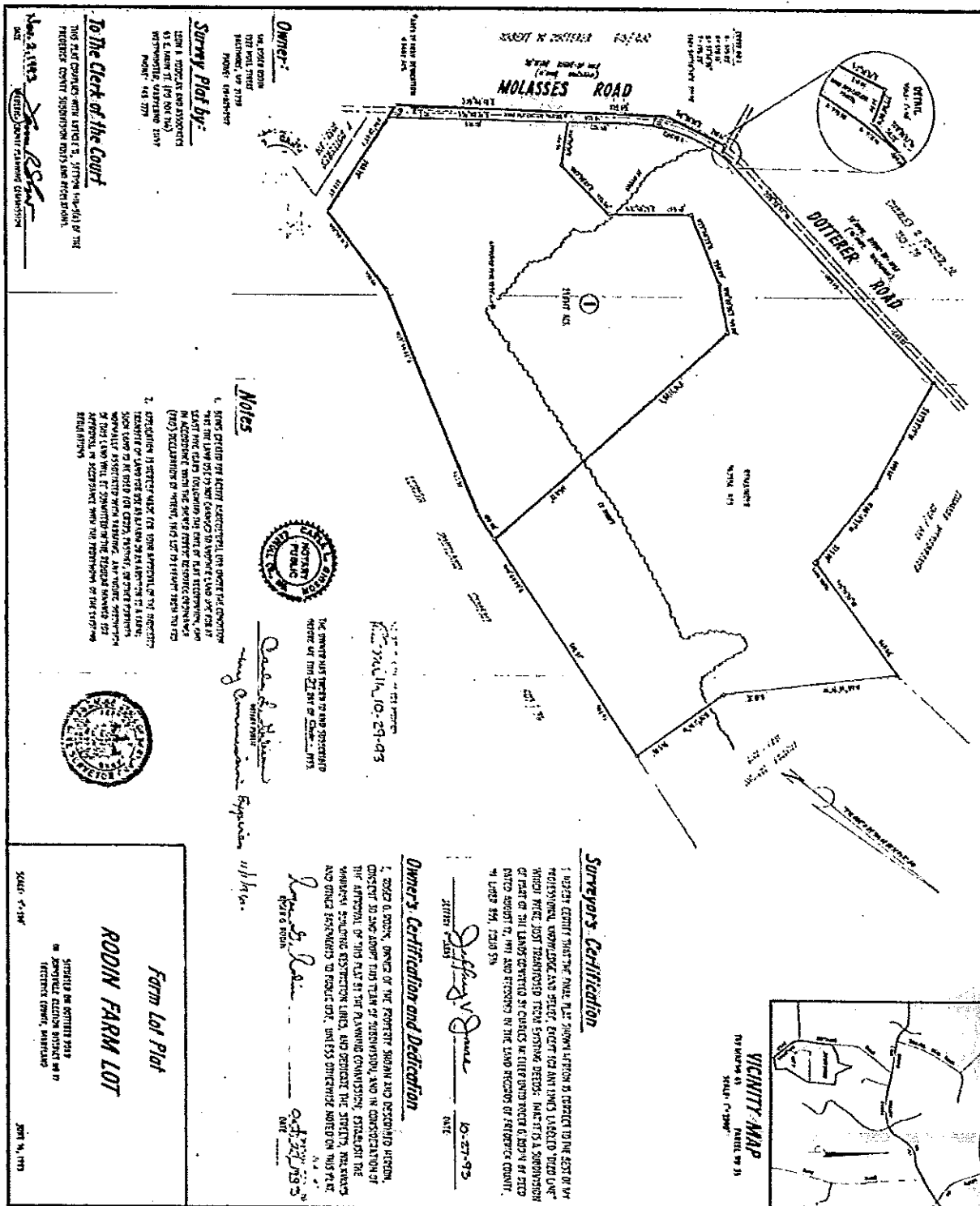


*Comparable Sale No. 3*

Grantor: Jeffrey T. & Amelia L. Morrissey  
Grantee: Charles R. & Diane M. Player  
Date: July 19, 2007  
Deed Reference: 6669/267  
Tax ID No.: 17-363441  
Consideration: \$655,000  
Area: 36.7334 acres  
Indicated Price Per Acre: \$17,831 per acre  
Zoning: Agricultural  
Property Rights Conveyed: Fee Simple  
Buyer Motivation: Assemblage with an adjacent parcel  
Highest & Best Use: Assemblage with an adjacent parcel  
Description: This property is located along the east side of Molasses Road in District 17, Frederick County, Maryland. Improvements include an older mobile home (NCV). The property is further identified as Tax Map Parcel 43-35. Utilities available are electricity and telephone. Water supply in the area is by drilled wells and sanitary disposal is by on-site septic systems. The land is above grade and is wooded and brush covered with gently rolling topography. Verification is by Court House records and Trend real estate reports. A mortgage amount of \$375,000 is held by MidAtlantic Farm Credit. From our analysis, this was an arms-length sale.



*Comparable Sale No. 3 – Plat Map*



*Adjustments for Comparable Sales*

<i>Sale No.</i>	<i>1</i>	<i>2</i>	<i>3</i>
Sale Price	\$727,000	\$3,200,00	\$655,000
Price Per Acre	\$27,494	\$13,474	\$17,831
Time	--	--	--
Time Adjusted Price Per Acre	\$27,494	\$13,474	\$17,831
<i>Other Adjustments:</i>			
Location/Visibility	--	--	--
Topography/Shape	--	--	+ 25%
Access	--	--	--
Zoning	--	--	--
Utilities	--	--	--
Size	+ 10%	+ 75%	+ 15%
Net Adjustment	+ 2,749	+ 10,106	+ 7,132
Indicated Price Per Acre	\$30,243	\$23,580	\$24,963

*Summary of Comparable Sales*

On the preceding pages, three comparable sales are analyzed to estimate the subject land value, which are located in the subject's immediate area. However, no comparable existing road bed sales have transferred within the past five years similar to the subject property. Time adjustments are not necessary since all three sales are indicative of current market activity. A plus adjustment is made for Sale 3's inferior topography, which considers this sale's wooded and brush covered area. Although all three sales have a different zoning classification than the subject property, no adjustment is warranted since these sales have the same highest and best use as the subject property. Finally, a plus adjustment is made to each sale for the subject's inferior size. Based on our analysis of these and other comparable sales, the indicated value of the subject property by the Sales Comparison Approach is \$25,000 per acre for 1.658 acres of land area for a total indicated value of \$41,500 (rounded).



*Reconciliation & Final Opinion of Value*

Value Indicated by Cost Approach-----not applicable  
Value Indicated by Sales Comparison Approach ----- \$41,500.  
Value Indicated by Income Capitalization Approach-----not applicable

In arriving at the final opinion of value for the subject property, all three approaches to value are considered. However, the only applicable method of valuation in appraising the subject property is the Sales Comparison Approach. The estimated market value of the total subject land area containing 1.658 acres is \$41,500 as of December 9, 2008.

This appraisal assumes an estimated exposure time of 6 to 12 months, which is typical for this type of property. The estimated marketing time for the subject property is 6 to 12 months, assuming market conditions remain stable and virtually unchanged from the effective date of this appraisal. We assume that no environmental problems exist on the property. However, if any should arise, we reserve the right to reconsider this appraisal and the final opinion of value.

## Qualifications of Appraiser - Richard L. Bowers

**BUSINESS NAME & ADDRESS:** Bowers Appraisal Service, LLP, 1928 Dual Highway, Hagerstown, MD 21740

**PHONE NUMBERS:** 301-739-7610, 301-416-7325; **FAX:** 301-416-7550 **EMAIL:** mike@bowersappraisal.com

**BUSINESS:** Real Estate Appraisals for Operating Farms, Historical Properties, Apartment Complexes, Industrial Facilities, Commercial Facilities, Subdivision Analysis, Recreational Development, Special Use Properties, Oil, Gas and Minerals, Residential Estates, Operating Sand and Gravel Banks, Peat Humus, Limestone Deposits, Silica Sand Deposits and Nike Sites and Aerial Rights. Partial taking appraisals completed for fee simple estates, restrictive easements, preservation, scenic easements, perpetual flowage, road drainage and air rights easements. Real Estate Planning Reports, Real Estate Design Memorandums and Research and Feasibility Studies. Counseling and testimony.

**EDUCATION:** Boonsboro High School, Boonsboro, Maryland  
Hagerstown Junior College, Hagerstown, Maryland, A.A. Degree

**LICENSES:** State of Maryland Certified General Appraiser No. 04-10001  
State of West Virginia Certified General Appraiser No. CG092  
Commonwealth of Pennsylvania Certified General Appraiser No. GA-000313-L  
Real Estate Broker in Maryland and Commonwealth of Pennsylvania

### PROFESSIONAL AFFILIATIONS AND MEMBERSHIPS:

- ♦ Designated and recertified through December 31, 2009 as SRPA, SRA by the Appraisal Institute
- ♦ Designated Senior Member in International Right of Way Association (SR/WA), Registration No. 813
- ♦ The Maryland Association of Appraisers, Incorporated
- ♦ Pen-Mar Regional Association of Realtors, Incorporated
- ♦ Maryland Association of Realtors and National Association of Realtors
- ♦ Past Member and Chairman of Washington County Economic Development Commission.

### SPECIAL TRAINING:

*Successfully completed courses given by American Institute of Real Estate Appraisers:*

- ♦ Real Estate Appraisal Principles and Procedures, Real Estate Appraisal Problems and Case Studies, and Real Estate Appraisal Condemnation Course
- ♦ Appraisal Institute Course 720, Condemnation Appraising in June of 1999, Orlando, Florida

*Attended the following Appraisal Institute seminars:*

- ♦ What Clients Would Like Their Appraisers To Know in November 2006, Altamonte Springs, Florida
- ♦ Appraisal of Residential Property for Foreclosure & Preforeclosure in September 2008, Baltimore, MD
- ♦ Office Building Valuation in September 2007, Baltimore, Maryland
- ♦ The Professionals Guide To U.R. Appraisal Reports in June 2005, Baltimore, Maryland
- ♦ Case Studies in Commercial Highest and Best Use in November 2007
- ♦ Course 430, Eminent Domain and Condemnation Appraising in November of 1998
- ♦ Appraisal of Nonconforming Uses in November of 1998, Atlantic City, New Jersey
- ♦ Standards of Professional Practice, Parts A & B (USPAP) in 1998 and 1999, Baltimore, Maryland
- ♦ Commercial Development and Market Update in February of 1999, Baltimore, Maryland
- ♦ Maryland Senior Housing Seminar in April of 1999, Baltimore, Maryland
- ♦ Valuation 2000 in July 2000, Las Vegas, Nevada
- ♦ The Transparent Grid, September 19, 2001 in Baltimore, Maryland
- ♦ Highest & Best Use Concepts, September 28, 2001 in Baltimore, Maryland
- ♦ Real Estate Fraud: The Appraiser's Responsibilities & Liabilities, October 19, 2001 in Baltimore, Maryland
- ♦ National USPAP Update in October 2008, Indian Harbour Beach, Florida
- ♦ Appraisal of Local Retail Properties, August 2004 in Baltimore, Maryland

## Qualifications of Appraiser - Richard L. Bowers

### **SPECIAL TRAINING (continued):**

#### *Other seminars attended:*

- ♦ Introduction to Environmental Considerations for the Appraisers in 1995
- ♦ Maryland State Highway Administration Seminar, "FHWA Appraisal Workshop" at Baltimore, Maryland, October 1998
- ♦ Department of Veterans Administration Appraisal Seminars: December 1998, November 2002, March 2004 and May 2005
- ♦ International Right of Way Education Seminars: Orlando, Florida in June of 2000 and June of 2002 in Mobile, Alabama
- ♦ Information Technology & The Appraiser, September 2001 in New Jersey
- ♦ Rates and Ratios: Making Sense of GIM's, OAR's and DCF in November 2003, Baltimore, Maryland
- ♦ Subdivision Valuation in February 2006, Altamonte Springs, Florida
- ♦ Appraising for the Secondary Market: Fannie & Fred in June of 2004
- ♦ S.R.E.A. Appraiser's Instructor's Clinic and ERC Relocation seminars
- ♦ Speaker at S.R.E.A. Conference in Washington, D.C.
- ♦ Attends Real Estate Appraisal Conferences and Research Seminars annually

### **INSTRUCTOR:**

- ♦ Real Estate-Right of Way Course, Pennsylvania State University Extension
- ♦ Course 101, An Introduction to Appraising Real Property for Society of Real Estate Appraisers at Frederick Community College

**SCOPE OF APPRAISALS:** Eastern United States -- Maryland, Pennsylvania, New York, Ohio, Virginia and West Virginia

### **EXPERIENCE:**

- ♦ Independent appraiser and counselor for all types of real estate including residential, commercial, industrial, farms and special use properties
- ♦ Staff and reviewing appraiser for 3 ½ years with U.S. Army Corps of Engineers

### **QUALIFIED WITNESS:**

- ♦ U.S. Federal Court of Middle District of Pennsylvania in Harrisburg, Lewisburg, Wilkes Barre and Williamsport
- ♦ U.S. Federal Court of Western District of Pennsylvania in Pittsburgh and Erie
- ♦ U.S. Federal Court of Northern District of West Virginia
- ♦ U.S. Federal Court of Eastern District of Virginia
- ♦ U.S. Federal Court, Baltimore, Maryland
- ♦ County Circuit Courts of Maryland for Baltimore City, Washington, Frederick, Allegany, Garrett, Carroll, and Montgomery Counties
- ♦ County Circuit Courts of Virginia for Clarke and Frederick Counties
- ♦ County Circuit Courts of Pennsylvania for counties of Franklin, Fulton and Huntingdon
- ♦ County Circuit Courts of West Virginia for Berkeley County
- ♦ United States Bankruptcy Court, District of Maryland
- ♦ Maryland State Tax Court and Maryland Public Service Commission

## Qualifications of Appraiser - Richard L. Bowers

### CLIENTS SERVED:

#### *Governmental Agencies:*

City of Frederick, Maryland  
 City of Hagerstown, Maryland  
 Department of Veterans Affairs  
 Federal Deposit Insurance Corporation (FDIC)  
 Frederick County Division of Public Works  
 Frederick County Planning Commission  
 Jefferson County, WV Industrial Development Authority  
 Maryland Department of General Services  
 Washington County Engineering Department

Maryland Economic Development Corporation  
 National Park Service  
 Review Appraiser for Fannie Mae  
 U.S. Army Corps of Engineers  
 U.S. Department of Justice  
 U.S. Forest Service  
 Washington County Commissioners  
 Maryland Department of Transportation

#### *Utility Companies and Corporations:*

A.C. & T.  
 Allegheny Power  
 Baltimore Gas and Electric  
 C&P Telephone  
 Cities Service Oil Company  
 Corporate Transfer Service  
 DuPont Corporate Relocation  
 Equitable Relocation Management  
 Ewing Oil Company  
 Exxon Company, U.S.A.  
 Gulf Oil Corporation  
 Hagerstown Block Company  
 Hagerstown-Washington Co. Industrial Foundation, Inc.  
 Hamilton Nissan, Incorporated  
 Individuals and Attorneys  
 IBM Corporation

Lowe's, Incorporated  
 Massey Ford, Incorporated  
 Merrill Lynch Relocation Management  
 Nationwide Insurance  
 Noland Company  
 Norfolk & Western Railroad  
 Penn-Central Company  
 Potomac Electric Power Company  
 Roadway Express  
 Smithsburg Development Corporation  
 Sun Oil Company  
 The Conservation Fund  
 The Nature Conservancy  
 Tri-State Electric Supply Company  
 URS Corporation

#### *Lending Institutions:*

Berks County Bank  
 Branch Banking & Trust (BB&T)  
 Bulldog Federal Credit Union  
 Centra Bank  
 Chase Bank of Maryland  
 Citicorp-Citibank  
 Fidelity Bank  
 First Mariner Mortgage Corporation  
 First National Bank of Greencastle  
 First National Bank of Mercersburg  
 First United Bank and Trust

Hagerstown Trust Company  
 HealthCare Family Federal Credit Union  
 Huntington Mortgage Company  
 M&T Bank  
 Mercantile-Safe Deposit & Trust Company  
 MidAtlantic Farm Credit  
 Middletown Valley Bank  
 Orrstown Bank  
 Provident Bank  
 Susquehanna Bank  
 Susquehanna Trust & Investment Company  
 Woodsboro Bank

## QUALIFICATIONS OF APPRAISER

Patrick B. Bowers

**BUSINESS NAME & ADDRESS:** Bowers Appraisal Service, LLP  
1928 Dual Highway, Hagerstown, Maryland 21740  
**PHONE NUMBERS:** 301-739-7610 & 301-416-7325 **FAX:** 301-416-7550

**BUSINESS:** Real estate appraisals and review appraisals for:

- Single Family Residential Properties (proposed and existing)
- Two-Four Family Units (proposed and existing) and Apartment Buildings
- Farms, Commercial and Industrial Properties, Vacant Land
- Partial taking appraisals completed for fee simple estates

**EDUCATION:** St. Maria Goretti High School, Hagerstown, Maryland  
Hagerstown Junior College, Hagerstown, Maryland, A.A. Degree  
University of Maryland Baltimore County, B.A. Degree in Sociology

**LICENSE:** Maryland Certified General Appraiser No. 04-20256

**PROFESSIONAL MEMBERSHIPS:** The Maryland Association of Appraisers, Incorporated  
International Right of Way Association, Member No. 5144

### SPECIAL TRAINING:

*Successfully completed and passed the following exams:*

- Appraiser Registration Licensure Program including Uniform Standards of Professional Appraisal Practice (USPAP) in Atlanta, Georgia, 1997
- Maryland Association of Appraisers Seminar "Sales Comparison Approach and the URAR" in Columbia, Maryland, September 1998
- Maryland Association of Appraisers Seminar "The Cost Approach to Valuing Residential and Commercial Properties" in Columbia, Maryland, March 1999
- International Right of Way Association Course 403 "Easement Valuation" in Hanover, Maryland, October 1999
- Maryland Association of Appraisers Seminar "Appraising Small Commercial Properties" in Columbia, Maryland, April 2000
- Maryland Association of Appraisers Seminar "Appraising Urban & Other Non-Homogeneous Properties" in Towson, Maryland, May 24 & 25, 2002
- Maryland Association of Appraisers Seminar "Advanced Appraisal Techniques for Commercial and Industrial Properties", in Glen Burnie, Maryland, June 4 & 5, 2004
- Maryland Association of Appraisers Seminar "Standards of Practice & Ethics (USPAP)" at Carroll County Community College in Maryland, August 24-26, 2004

### SEMINARS AND CONTINUING EDUCATION:

- Maryland Association of Appraisers Seminar "FHA Review Guidelines" in Annapolis, Maryland, June 1998
- Maryland State Highway Administration Seminar "FHWA Appraisal Workshop" in Baltimore, MD, 10/1998
- Maryland Association of Appraisers Seminar "Farm and Land Appraisal" in Annapolis, Maryland, April 1999
- Maryland Association of Appraisers Seminar "Reviewing Residential Appraisal Reports" in Towson, Maryland, October 16, 2001
- Maryland Association of Appraisers Seminar "Standards of Practice & Ethics for Appraisers (USPAP)" in Towson, Maryland, November 10, 2001
- Appraisal Institute Seminar "Appraisal of Local Retail Properties" in Baltimore, Maryland, August 16, 2004
- McKissock Seminar "Appraising High Value Residential Properties" in Gaithersburg, Maryland, April 18, 2005
- McKissock Seminar "7 Hour National USPAP Course, December 8, 2007
- Maryland Association of Appraisers Seminar "Eminent Domain & Land Valuation Litigation", October 8, 2008

**QUALIFICATIONS OF APPRAISER**  
**Patrick B. Bowers**

**QUALIFIED WITNESS:** Washington County Board of Property Review

**EXPERIENCE:**

- Appraisal field work experience with Richard L. Bowers, SRPA, SRA, SR/WA since 1990
- Lender Selection List of Appraisers – U.S. Department of Housing & Urban Development since 1999

**CLIENTS SERVED:**

*Lending Institutions*

Bank of America  
Branch Banking & Trust Company  
Centra Bank  
Dauphin Deposit Bank and Trust  
First National Bank of Mercersburg  
Fulton Financial  
Hagerstown Trust Company  
HealthCare Family Federal Credit Union  
Huntington Mortgage Group  
1<sup>st</sup> Mariner Mortgage Corporation  
M&T Bank  
Merrill Lynch Credit Corporation  
Mortgage Capital Investors  
National City Mortgage  
NVR Mortgage  
Susquehanna Mortgage Corporation  
Valuation Administrators, Ltd.  
Wells Fargo Bank

*Governmental Agencies*

City of Frederick  
Frederick County Commissioners  
Maryland Department of General Services  
Maryland State Highway Administration  
National Park Service  
Washington County Commissioners  
Frederick County Division of Public Works

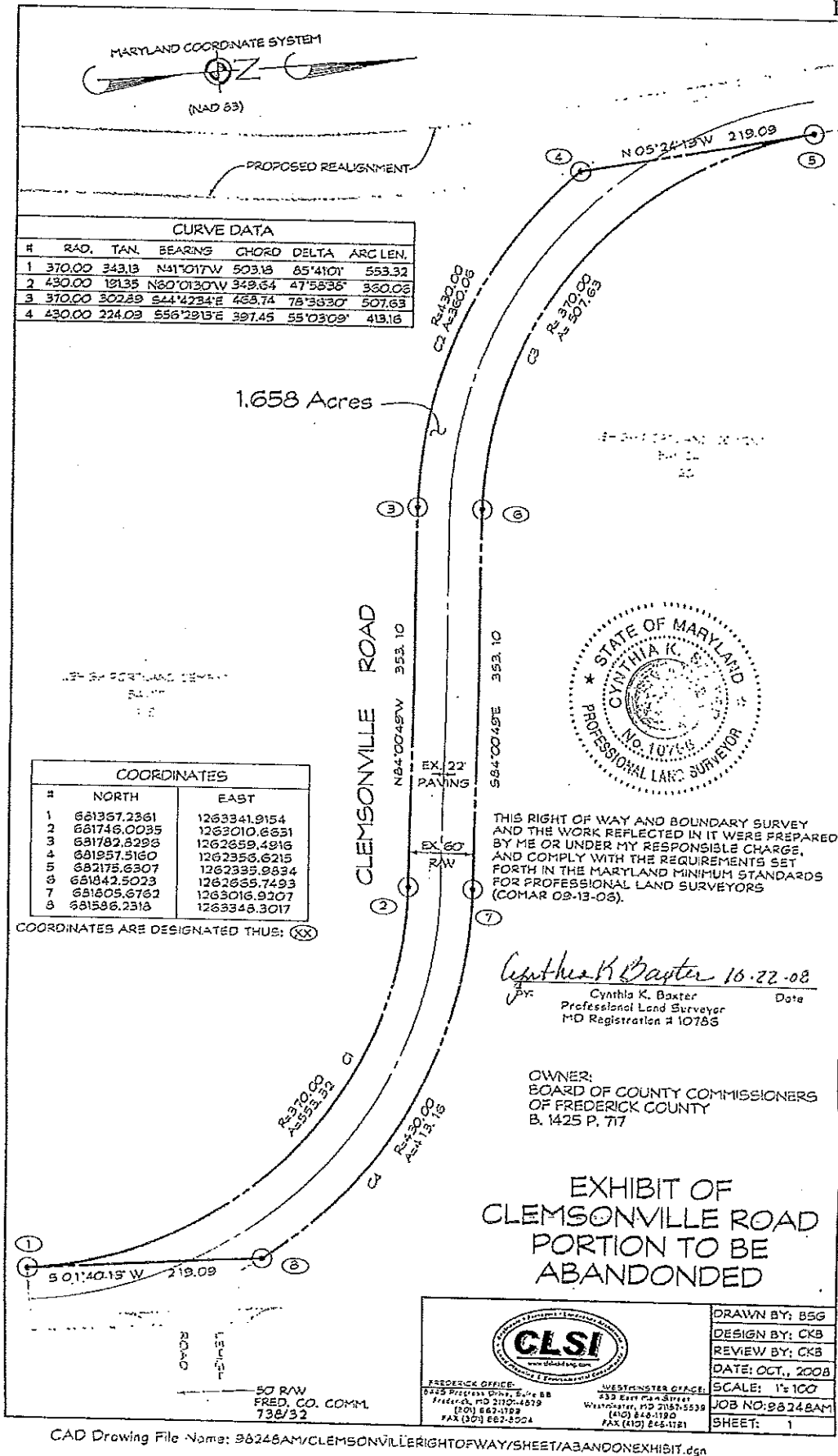
**Public and Private Agencies**

Allegheny Power  
Attorneys and Individuals  
CSX Real Property, Incorporated  
Individuals  
Mount De Sales Academy  
The Nature Conservancy  
The Conservation Fund  
URS Corporation

## Assumptions and Limiting Conditions

- The legal description used in this report is assumed to be correct.
- No survey of the property has been made by the appraiser and no responsibility is assumed in connection with such matters. Sketches in this report are included only to assist the reader in visualizing the property.
- No responsibility is assumed for matters of a legal nature affecting title to the property nor is an opinion of title rendered. The title is assumed to be good and merchantable.
- Information furnished by others is assumed to be true, correct, and reliable. A reasonable effort has been made to verify such information; however, no responsibility for its accuracy is assumed by the appraiser.
- All mortgages, liens, encumbrances, leases and servitudes have been disregarded unless so specified within the report. The property is appraised as though under responsible ownership and competent management.
- It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering, which may be required to discover them.
- It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is state, defined and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined and considered in the appraisal report.
- It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- The appraiser will not be required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been previously made therefor.
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualification and only in its entirety.
- The distribution of the total valuation in this report between land and improvements applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
- Unless otherwise stated in this report, the existence of hazardous material\*, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicted on the assumption that there is no such material on or in the property that would cause a loss in value.
- No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in the field, if desired.
- Unless otherwise noted in the body of this report, I have not completed nor have I contracted to have an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property.
- Neither all or any part of the contents of this report, or copy thereof, shall be conveyed to the public through advertising, public relations, news, sales or any other media without written consent and approval of the appraiser. Nor shall the appraiser, firm or professional organization of which the appraiser is a member be identified without written consent of the appraiser.
- Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and general limiting conditions.
- This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

\*Urea-formaldehyde Foam Insulation, Radon Gas, Asbestos Products, Lead or Lead Based Products, Toxic Waste Contaminants.







DEED – MINERAL RIGHTS AND NON-SUBDIVISION

THIS DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between **HANSON AGGREGATES PENNSYLVANIA, INC.**, a corporation of the State of Pennsylvania (Grantor) and the **BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (Grantee).

WITNESSETH: That for five dollars (\$5) monetary consideration, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hanson Aggregates Pennsylvania, Inc., Grantor, does hereby grant and convey, unto the Board of County Commissioners of Frederick County, Grantee, all of Grantor's interest in and to all of the oil, gas, limestone, and all other minerals in and under, and that may be produced or extracted from that piece or parcel of land situate, lying and being in the Seventeenth Election District, Frederick County, Maryland, and more particularly described on **EXHIBIT "A"** attached hereto and incorporated herein (the "**Buckey Farm**").

Together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing the Buckey Farm for oil, gas, limestone and other minerals and transporting and marketing the same therefrom.

Being the same real estate conveyed unto Grantor from Elizabeth B. Clark and Mary Marshall Buckey, Trustees of a Revocable Inter-Vivos Trust created by George P. Buckey and Martha B. Buckey by Agreement dated April 15, 2003, by deed dated March 11, 2008 and recorded among the Land Records of Frederick County, Maryland in Liber 6919 at folio 272.

Grantor further covenants and agrees that the Buckey Farm shall not be subdivided, partitioned or subjected to any condominium regime or other action (including a request for a court to partition the land) that could have the effect of creating more than one parcel or lot from the property currently comprised of 237.488 acres, more or less as described in Exhibit A. hereto.

It being the express intent of the parties that the 237.488 acres of land remain as one parcel under common ownership in perpetuity.

The benefits and burdens of these covenants shall run with the land to the benefit of the Grantee, adjacent and nearby property owners, and the citizens of Frederick County, Maryland, any of whom shall have the right to seek specific performance thereof of these covenants, which shall be binding upon all of the heirs, successors and assigns of Grantor.

Reserving unto Grantor, however, all other fee simple title rights, including but limited to surface rights in and to the Buckey Farm, use of any buildings and improvements thereon, and all of the remaining rights, ways, roads, waters, easements, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described property interests and covenants unto the said **BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY**, a body corporate and politic of the State of Maryland, Grantee, its successors and assigns, forever.

Witness the hands and seals of the Grantor on the day and year first above written.

WITNESS:

HANSON AGGREGATES PENNSYLVANIA, INC.  
a corporation of the State of Pennsylvania

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\* \* \*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, TO WIT:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned officer, a Notary Public of the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged himself to be \_\_\_\_\_ of Hanson Aggregates Pennsylvania, Inc., a Pennsylvania corporation, and that he/she, as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such \_\_\_\_\_; and at the same time, they did further certify under the penalties of perjury that the actual consideration paid or to be paid for the foregoing conveyance is zero.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

ATTORNEY'S CERTIFICATE

This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_

**EXHIBIT A**

Description of Property